

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN J. O'KEEFE,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

NO. MC-06-008-CI

ORDER ADOPTING REPORT AND
RECOMMENDATION TO TRANSFER

BEFORE THE COURT is Plaintiff's Motion to Quash the Magistrate's Order to Transfer Case No. MC-06-008 to Portland, Oregon. (Ct. Rec. 4.) Plaintiff is proceeding *pro se*. The court construes Plaintiff's Motion as a timely filed objection to the Order to Transfer pursuant to 28 U.S.C. § 1404(a) filed by the Magistrate Judge on February 3, 2006. (Ct. Rec. 3.) That Order to Transfer, which the court now construes as a Report and Recommendation to Transfer, was in response to Plaintiff's initial pleading entitled Petition to Vacate a Void Judgment; the challenged judgment was entered by the United States District Court for the District of Oregon in Cause No. 84-0797-PA, *United States of America v. Morgan Overseas Bank, Ltd.* (Ct. Rec. 1.)

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1 Pursuant to the magistrate judge's Order, cause number MC-06-008-CI
2 was transferred to the District of Oregon on February 3, 2006.¹

3 Under 28 U.S.C. § 636(b)(1)(A), magistrate judges have authority
4 to decide motions to transfer under 28 U.S.C. § 1404(a). *O'Brien v.*
5 *Goldstar Technology, Inc.*, 812 F.Supp. 383 (W.D.N.Y. 1993). A motion
6 for § 1404(a) transfer is a nondispositive issue. *McEvily v. Sunbeam-*
7 *Oster Co., Inc.*, 878 F. Supp. 337, 339 (D.R.I. 1994). A non-
8 dispositive ruling may be reconsidered by the district judge when it
9 is shown that the order is clearly erroneous or contrary to law. 28
10 U.S.C. § 636(b)(1)(A) (1988); Fed. R. Civ. P. 72(a). A finding is

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12 Although Plaintiff filed his Objection within ten days of the
13 Magistrate Judge's Order to Transfer, the Clerk of the Court, in
14 accordance with that Order, closed the file on February 3, 2006 and
15 transferred it to the Clerk of the District of Oregon. An issue is
16 raised whether this court retains jurisdiction to hear Plaintiff's
17 objections. The general rule is, absent an issue as to the court's
18 power to transfer the case, physical transfer of the court file
19 deprives the transferor court of jurisdiction. See *Farrell v. Wyatt*,
20 408 F.2d 662, 664-65 (2d Cir. 1969); *Drabik v. Murphy*, 246 F.2d 408,
21 408-10 (2d Cir. 1957); see also *In re Warrick*, 70 F.3d 736, 738-40 (2d
22 Cir. 1995)(directing the district court to "request" the return of the
23 file from the transferee court to correct an abuse of discretion).
24 The court has construed Plaintiff's objection as a challenge to the
25 court's authority to transfer the case.
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1 clearly erroneous when it is against the clear weight of the evidence,
2 or when the court has "a definite and firm conviction that a mistake
3 has been committed." *Holmes v. Bateson*, 583 F.2d 542, 552 (1st Cir.
4 1978) (quoting *Evans v. United States*, 319 F.2d 751, 753 (1st Cir.
5 1963)).

6 Transfer under § 1404(a) involves review of both private and
7 public factors. *Gulf Oil v. Gilbert*, 330 U.S. 501, 508 (1947). A
8 presumption exists Plaintiff's choice of forum is the correct choice.
9 *Blinzler v. Marriott International, Inc.*, 857 F. Supp. 1, 3 (D.R.I.
10 1994) (quoting *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22,
11 29 (1988)). However, that presumption may be overcome by other
12 factors, including (1) the convenience of the parties, (2) the
13 convenience of the nonparty witnesses, and (3) the interest of justice
14 in light of this background. *General Committee of Adjustment v.*
15 *Burlington Northern R.R.*, 895 F.Supp. 249, 252 (E.D.Mo. 1995); *Nieyes*
16 *v. American Airlines*, 700 F.Supp. 769, 7772 (S.D.N.Y. 1988).

17 This matter was tried by the District of Oregon and a judgment
18 entered years ago. As noted by the magistrate judge, the gravamen of
19 Plaintiff's "Petition" is a collateral attack on that judgment. There
20 are no claims at issue independent of that judgment. To the extent
21 the relief sought involves a collateral attack on the judgment entered
22 by the District of Oregon, it is for that court to decide. Thus, the
23 cause of action is minimally connected with this forum. *Eichenholtz*
24 *v. Brennan*, 677 F.Supp. 198, 201 (S.D.N.Y. 1988). The conclusion of
25 the Magistrate Judge was not clearly erroneous or contrary to law.
26 The Report and Recommendation to Transfer is **ADOPTED**.

